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RANKIN, HILL, PORTER & CLARK LLP 4080 ERIE STREET WILLOUGHBY, OH 44094-7836			EXAMINER RUSSELL, CHRISTINA MARIE	
			ART UNIT 2837	PAPER NUMBER

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/532,400

Applicant(s)

GOTO, MASATAKA

Examiner

Christina Russell

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-19, 22-28, 33, 37, 39, 40 and 54-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41-53 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-19, 22-28, 33, 37, 40 and 56-63 is/are rejected.
- 7) ☒ Claim(s) 54 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:
2. On page 47 of the specification, reference number 17 is mentioned in relation to Figure 5(A), but does not appear in Figure 5(A).
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

5. In Figure 6, reference character ST13 is shown but not discussed in the specification.

6. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to because:

8. Figure 7 is presented but not mentioned or discussed in the specification.

9. On page 81 of the specification, reference number 118 is mentioned, therefore reference needs to be made back to Figure 16 where 118 is shown.

10. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

11. The disclosure is objected to because of the following informalities:
12. In the Background Art section of the specification the prior art made mention to needs to be more specific. Either the author or inventor needs to be mentioned in the Information Disclosure Statement, or the title of the prior art needs to be referenced along with the author/inventor in the specification, to make referencing the mentioned prior art easier for the examiner while reading the spec.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

13. Claims 7, 8, 14, 15, 27, 28, 33, and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In all of the mentioned claims both chorus parts/sections and repeated parts/sections are claimed but are considered to be the claiming the same thing. A chorus is a repeating section of a song or musical piece.

14. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites the limitation "the one or more chorus section selection buttons". There is insufficient antecedent basis for this limitation in the claim. "The one or more chorus section selection buttons" do not appear in the preceding claim 22, which claim 24 is dependent upon.

15. The term "being so constructed" in claims 33 and 54 is a relative term which renders the claim indefinite. The term "being so constructed" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

16. Claims 37, 39 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. Claims 37, 39 and 40 claim a method but do not provide steps for carrying out said method.

17. Claims 54 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted step is: the playback step for which the program is intended.

### ***Claim Rejections - 35 USC § 101***

18. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 33, 54 and 55 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. Claims 33, 54 and 55 claim a computer program per se but does not claim a medium on which the program resides. Software alone cannot be claimed; software must be claimed relative to the hardware on which it is implemented or run.

***Claim Objections***

19. Claims 18 and 19 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 18 and 19 state subject matter already claimed in preceding independent claim 15.

20. Claims 13, 14, 27, 62 and 63 are objected to because of the following informalities:

21. Claims 13 and 14 repeat elements claimed in independent claim 7.

22. Claim 27 repeats elements claimed in independent claim 15.

23. And claims 62 and 63 repeat elements claimed in independent claim 8.

24. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

25. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:



A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

26. Claims 1-4, 7-10, 13, 15-19, 22, 23, 26-28, 33, 37, 39, 40, 56- 59 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by the US patent application publication to Herley (US 2004/0001161).

27. In terms of claim 1, Herley teaches a playback device and method which specifies multiple musical data structure sections (see paragraphs [0004], [0011], [0034], [0038], [0042], [0043], [0119]-[0135], [0139], [0140]), consisting of an interface, which allows for the selection of one of said structure sections, and allows for the editing of said selected section, such as the playback position of said structure section within the data stream (see paragraphs [0014], [0010], [0013], and [0073]). Herley further teaches the structure sections being identified based on statistical data or stored data from a specified queried database (see paragraphs [0016], [0076], [0175], and [0176]).

28. As for claims 3 and 4, dependent upon claim 1, Herley teaches said structure sections as repeated sections, and since a chorus is a repeated section of a song it is inherent that the apparatus and method taught by Herley further encompasses the chorus of a musical piece. Also, Herley states in paragraph [0014] that the object extractor, or repeating object identifier, can be applied to identifying repeating objects anywhere within a media stream, for example the chorus section of a song (see further references cited in claim 1).

29. In terms of claim 2, and it's dependent claims 56 and 57, Herley again teaches all the claimed elements similar to those presented in claims 1, 3 and 4, including the further editing of the selected section, more specifically, to playback in a manner in which the user selects, using the interface provided (see references cited in claims 1, 3 and 4).

30. In terms of claim 7, Herley teaches all the similar elements claimed in claims 1, 3 and 4 (see above cited references), including a visual display of the playback of the selected section and it's length in terms of time. For example, Herley uses a 10 second segment as a reference, and Herley or the user of the interface knows this segment is 10 seconds because of the time/length identifier present on the display of the interface (see paragraphs [0041], [0068], and [0139]).

31. As for claim 9, dependent upon claim 7, Herley teaches of selection buttons present on the interface, and manipulated by the user (see paragraphs [0037]-[0029], and [0141]-[0143]).

32. As for claim 10, as stated above, Herley teaches the detection or identification of repeated sections, and it has already been established that a chorus is a repeated section of a song, therefore Herley's teaching of the selection buttons used to select identified repeated sections can translated to the use of the selection buttons to select identified chorus sections (see above references made in claim 9).

33. As for claim 13, Herley again teaches of selection buttons present on the user interface, including these buttons affecting the display, by using them to edit the selected sections (see again references made in claim 9).

34. In terms of claim 8, Herley again teaches the similar elements presented in claims 1 and 2 and the visual display claimed in claim 7. Therefore, reference should be made to those paragraphs made mention to in claims 1, 2 and 7.

35. As for claims 58, 59 and 62, dependent upon claim 8, Herley teaches the similar elements presented in claims 9 and 10 (see above references).

36. In terms of claim 15, Herley teaches the similar above claimed elements of claims 1 and 7, including a specified storage means for storing the designated sections (see paragraphs [0016], [0022], [0025], [0026], [0061] and [0066]).

37. As for claim 16, Herley further etches the storing means reading and storing accompanying data associated with the sections, such as user specified actions, data or controls (see references made above, and paragraphs [0034], [0035], [0037]).

38. As for claim 17, Herley teaches a generation means for extracting the sections and generating said specified sections (see above references from claims 15 and 16, and paragraphs [0010] and [0013]).

39. As stated above, claims 18 and 19 repeat elements already claimed in claim 15.

40. As for claims 22 and 23, Herley again teaches the elements similar to those presented in claims 9 and 10 (see above mentioned references).

41. Along those same lines, Herley again teaches the claimed elements of claims 9 and 13, as related to claim 26.

42. Independent claim 28 incorporates the previously discussed elements of claims 1, 7 and 9; therefore those paragraphs mentioned above should be referenced.

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43. Independent claim 33 also incorporates those elements of claims 1, 7 and 9, along with the storage means of claim 15 and the chorus/repeated section selection buttons of claim 10. Additionally, Herley teaches his device implemented as an executable program (see references for above mentioned claims, and paragraph [0061]).

44. In terms of claims 37 and 39, Herley again teaches similar elements presented in claim 1, including elements which deal with extraction of data (see again references presented above and paragraphs [0010] and [0013]).

45. As for claim 40, a histogram represents frequency data, and Herley teaches extraction, use and editing of frequency data related to designated sections (see paragraphs [0025] and [0034]).

### ***Claim Rejections - 35 USC § 103***

46. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

47. Claims 11, 12, 14, 24, 25, 27, 60, 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herley, in view of the US patent to Nakai et al. (5,737,308).

48. As for claims 11 and 12, Herley teaches all the above claimed elements of claims 9 and 10, but does not teach the chorus/repeating selection buttons including the option of selecting either a previous chorus/repeating position section or a next position section. Nakai et al. however does teach of such an option. Nakai et al. teaches specified keys used to designate the chorus or repeated sections the user wishes to visit (see column 9, lines 36-49, column 12, line 48 – column 13, line 4, and column 13, lines 48-65). These keys or buttons are present on a user interface similar to the one provided by Herley. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to incorporate the key or button functions of Nakai et al. into the already present chorus/repeat selection buttons of Herley, both inventions consisting of playback and section selection system comprising a display, a user interface, storage means etc.

49. As for claim 14, the same logic applies as discussed above seeing as Herley teaches all the above claimed elements of claim 13, and claim 14 consists of the elements discussed in both claims 11 and 12.

50. Claims 24, 25, and 27, dependent upon independent claim 15, and claims 60, 61, and 63, dependent upon independent claim 8, incorporate the same ideas as presented in the above mentioned claims 11, 12 and 14. Therefore it would have again been obvious to combine the references of Herley and Nakai et al. for the reasons stated above.

***Allowable Subject Matter***

51. Claims 54 and 55 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

52. The following is a statement of reasons for the indication of allowable subject matter:

53. In terms of claim 41, Herley teaches all the similar elements as presented in the above mentioned claims, including an extracting means for specified data and calculations means for specifying said data, but Herley does not teach, and it could not be found in other prior art, the intricate calculating of similarities in the extracted data, in order to list the extracted data sections in accordance with their similarities. Further, Herley fails to teach an integrated repeated section determination step of examining the interrelationship among the listed sections and integrating one or more of said sections with common structures to provide specified groups of data structures. In short, Herley does not teach of such organization of extracted or detected data structure; Herley, and other references, merely located repeated data structures and allow the user the edit said sections, but do not provide the listing, grouping and integrating of such sections in order to better file a repeated section when it is located or detected. Therefore claim 41 and its dependent claims 42-49 are allowable.

54. For similar calculation and organizational reasons independent claims 50, 51, and 53 and their dependent claims are allowable.

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55. Independent claim 54, and it's dependent claim 55, would be allowable, as mentioned above, for the same reason, if not for the 112 and 101 rejections.

### ***Conclusion***

56. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see Notice of references Cited, provided by the Examiner.

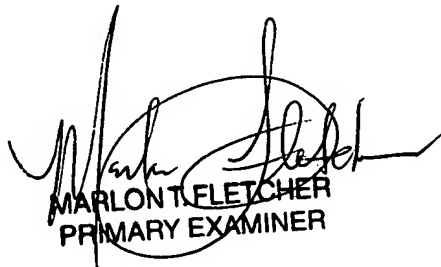
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Russell whose telephone number is 571-272-4350. The examiner can normally be reached on Mon-Fri, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on 571-272-2800 ext. 33. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CR  
3/15/2006



MARLON T. FLETCHER  
PRIMARY EXAMINER